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CONTENTS

CURRENT TOPICS

Criminal Justice Act, 1948: Date of Commencement

THE 13th September, 1948, has now been fixed by Order in Council (S.I. 1948 No. 1840) as the date on which a considerable number of the new provisions of the Criminal Justice Act, 1948, are to come into operation. As from that date the power to pass a sentence of whipping is abolished (s. 2) as well as the privilege of peerage in criminal proceedings (s. 30), and the restriction on sentence of death set out in s. 16 takes effect. The details of other new provisions which are to come into operation on that date will be dealt with in an article in an early issue of the JOURNAL, but it is sufficient here to notice s. 32, dealing with the issue of a single summons on more than one information, s. 33, providing for the supply of copies of informations to persons committed for trial, s. 38, containing an amendment of the Criminal Appeal Act, 1907, s. 42, dealing with the order of speeches, s. 44, relating to the payment of costs of defence on acquittal, s. 67, dealing with arrest on failure to surrender to bail before courts of summary jurisdiction, and s. 68, restricting the power to arrest without warrant under the Vagrancy Act, 1824. A large number of amendments and repeals are listed in two separate appendices to the order.

Town and Country Planning: Building Preservation Orders

THE Town and Country Planning (Building Preservation Order) Regulations, 1948 (S.I. 1948 No. 1766), came into operation on 16th August, 1948. They deal with the form of building preservation orders made under s. 29 of the Town and Country Planning Act, 1947, and the procedure to be followed in connection with the submission and confirmation of such orders. The Ministry of Town and Country Planning have notified clerks of all local authorities in England and Wales that a circular dealing with matters arising out of the regulations will be issued as soon as possible. In the meantime it is sufficient to observe that the order, with a plan and a statement of the grounds on which the local authority consider that the order should be confirmed, must be sent to the Minister, to the county council or local planning authority (if the county council made the order) and to the owner and occupier of the building, who must also be given notice of submission of the order to the Minister. The notice to the owner and occupier must contain a statement that the period of twenty-eight days during which representations and objections may be sent to the Minister shall run from the date of the service of the notice. The order also sets out the form of building preservation order and, in the Second Schedule, the provisions of Pt. III of the 1947 Act relating to permission to develop land, to applications for such permission and to enforcement notices, adapted and modified for the purposes of the orders.

Development Plans

THE form and content of development plans prepared under Pt. II of the Town and Country Planning Act, 1947, and the procedure to be followed for bringing them into operation, have now been laid down by the Town and Country Planning (Development Plans) Regulations, 1948 (S.I. 1948 No. 1767), which came into operation on 16th August. The regulations apply also to proposals for alterations or additions to a development plan. Part II, reg. 4, provides that a development plan shall consist of a basic map and a written statement and such other maps as may be appropriate under succeeding provisions, which mention four other varieties of map. The particulars and proposals required in these maps are specified in the First Schedule. The details to be included in a written statement are set out in Pt. II. Part III deals with the procedure for the submission and approval of development plans and the sale of copies, and the Second Schedule contains the appropriate forms. Part IV provides for the procedure in relation to development plans being carried out at the same time as that in relation to the making of orders relating to trunk roads under the Trunk Roads Act, 1946, or new towns under the New Towns Act, 1946. The Ministry of Town and Country Planning propose soon to send local authorities a circular on the regulations.

New Rules of the Supreme Court: Companies

AN important statutory instrument which comes into operation on 30th September (S.I. 1948 No. 1756) amends the Rules of the Supreme Court relating to procedure on applications under the Companies Act, 1929 (Ord. LIIIB), so as to bring them up to date for the purpose of the 1948 Act. A new r. 5 is substituted, providing that the following applications shall be made by petition: (*a*) applications to cancel an alteration of objects under s. 5; (*b*) applications to cancel an alteration in the form of the constitution of the company by substituting a memorandum and articles for a deed of settlement under s. 395; (*c*) applications to cancel an alteration in conditions in the memorandum under s. 23; (*d*) applications to confirm a reduction of capital under s. 67; (*e*) applications to confirm the reduction of any share premium account or any capital redemption reserve fund under s. 56 (1) or s. 58 (1) (*d*); (*f*) applications to cancel

any variation of the rights of holders of special classes of shares under s. 72; (*g*) applications to sanction the issue of shares at a discount under s. 57; (*h*) applications to sanction a compromise or arrangement under s. 206 (2); (*i*) applications to restore a company's name to the register under s. 353; (*j*) applications for relief by officers of a company or by persons employed as auditors by a company under s. 448 (2). The order also specifies, in a new r. 7, applications to be made by motion, which include the application that shares or debentures shall cease to be subject to restrictions imposed by the Board of Trade under s. 174 (3). Twenty-one minor applications are listed under a new r. 8 as having to be made by summons. The order also contains a number of minor amendments. For the convenience of practitioners, Order LIIIB has been reproduced in a consolidated form embodying the above amendments, by the Rules of the Supreme Court (Companies) (No. 2), 1948 (S.I. 1948 No. 1880 (L.22)).

Compensation for Neglect of Gardens

A CASE under s. 2 (1) (*b*) of the Compensation (Defence) Act, 1939, reported in the *Estates Gazette* of 7th and 14th August, is useful not because of any legal points involved, but because it indicates the sort of compensation that the General Claims Tribunal considers appropriate where requisitioned grounds and gardens are allowed to fall into a state of neglect and decay. The grounds and gardens at Aldenham House, Elstree, the property in question, were stated to contain the most beautiful collection of shrubs in the country and the finest avenue of poplars in the world. The Ministry of Works admitted liability to the amount of £5,251, £3,503 of which was expressed to be on an *ex gratia* basis. The lessees claimed £21,740 and the tribunal awarded £11,100, with costs to be taxed by the Supreme Court. It was stated on behalf of the lessees that the lawns were now covered with weeds and nettles and were useless as grass. Rides intersecting the most famous plantation of oaks in the world had become impassable, and nearly 90 per cent. of the shrubs had been smothered and would not recover. The report in the *Estates Gazette* contains complete details of the evidence.

The Local Government (Members' Allowances) Regulations, 1948

NEW regulations (S.I. 1948 No. 1784) came into operation on 16th August governing the administration of allowances to members of local authorities and other bodies. The regulations are made under s. 113 and s. 117 of the Local Government Act, 1948, and under the former section they establish maximum rates of travelling allowance and subsistence allowance. The Minister of Health states in Circular 145/48, dated 12th August, that since the Act was passed members have been entitled to claim allowances under the section, and local authorities to pay them, subject to normal principles of reasonable expenditure, but the maxima will apply as from 16th August. Regulation 6 requires every body to keep records of allowances paid under Pt. VI of the Act, to be open to inspection without charge at all reasonable hours to local government electors in the area. Regulation 7 deals with the position where allowances might be payable by more than one body or under more than one enactment, and provides that if the duties in respect of which the allowances are payable are performed in the same period the allowances are to be aggregated and treated as though the duties had been performed on behalf of a single body. The rates for travelling and subsistence allowances are liberal, providing for Pullman and first-class travelling where necessary, and for as much as 32s. 6d. for an absence overnight.

Law Office Organisation

FROM Australia, whence solicitors in the English-speaking world have recently been deriving valuable guidance on office organisation, comes further information on the same subject in the form of extracts from an address by Mr. R. N. VROLAND to the 1948 Australian Law Convention, published in the issue of the *Law Institute Journal* for 1st June, 1948. Not all of his views will commend general assent, or are applicable to other countries—for instance: "While there will still, no doubt, be many one-man offices, the day of the one-man office is falling far behind." His reference to the shortage of trained staff, with the inference that "we must organise to survive," will meet with approval. A problem that occurs everywhere is how to delegate authority while retaining by "remote control" the confidence of the client. He recommends that an office manager is essential, and that he should be a solicitor with actual practical experience. A point which has been made before is considered by Mr. Vroland to be worth emphasis: "Solicitors do not spend nearly enough time in the selection of their receptionist and telephonist." He rightly considers it to be one of the most important jobs in the office, being "the first point of contact with the outside world." The important point, however, which he brings out in his address is that it is only by organisation that the profits of a law firm can nowadays be kept at the right level in order to maintain the high ethical standards which the profession seeks to achieve.

Office Systems

MR. VROLAND also deals with various systems that are already known to solicitors. He considers the reminder system described in Woodman's book on Solicitors' Offices and Accounts to be uneconomic, but in 1938 he adopted a modification which involved the preparation of an additional initialled and coloured carbon copy of every letter, office memorandum, instruction or note that was made. He also stresses the necessity for good filing and costing systems. On costs, he points out that solicitors should constantly bear in mind that it costs at least 50 per cent. of the total revenue to run even a small office. Solicitors will also find interesting his assertion that direct productive costs (i.e., wages of the law staff) are, broadly speaking, equal to indirect productive costs (i.e., wages of the administrative staff, stationery, etc.). The difficulty of relating these facts to the none too generous official scales is an additional reason, says Mr. Vroland, for having a well-planned costing system. He believes that the time-records suggested by Mr. Heber-Smith in his book on Office Organisation are not only practicable but necessary. We referred to these records in a commentary on Mr. Heber Smith's book (*ante*, pp. 5, 19 and 34). Mr. Vroland commends the British system of partnership, but adds, somewhat controversially, that he has no hesitation in saying that "the day of the unqualified law clerk is going and we must see that it goes without more delay." He says this not in criticism of those unqualified clerks who have served the profession so well, but in self-defence against the possibility of an era of fee-cutting which would result from qualified clerks setting up practices on their own, owing to inability to obtain remunerative employment.

County Court Reforms in Australia

IT is interesting, in view of the recent proposals made by the Committee on County Courts in its interim report (*ante*, p. 448), to discover from the *Law Institute Journal* for 1st June, 1948, that something is already being done on similar lines in Australia. It seems that, as a result of representations by the Institute, His Honour Judge BOOK intimated that in future the county court list would be called at the end of the first week in each month, cases being fixed up to approximately the middle of the next month. In addition, the registrar of the county court agreed to forward to the Institute a copy of the list of cases as fixed, for posting on the notice board of the Institute. The *Journal* expresses a hope that "solicitors will do their part in making the new arrangement work smoothly by consulting with the opposing solicitor and their own counsel with a view to arriving at a mutually suitable date, endeavouring to make a more correct estimate of the time required for their cases and advising the registrar promptly whenever a case is settled." These observations are exactly applicable to the new arrangements recommended by our own committee.

TOWN AND COUNTRY PLANNING ACT, 1947

HAS IT AFFECTED CONVEYANCING?—II

THE first part of this article was intended to show that Pt. III of the 1947 Act, controlling development, contained no revolutionary change necessitating any alteration in the conveyancing practice to which readers had been used in the years immediately preceding the 1st July. We must now consider whether the financial provisions of Pts. VI and VII have created any revolutionary change.

To do this we must look at the history of compensation in relation to control of land use before the Act of 1947. At common law the State cannot appropriate a person's property without payment of compensation, but a mere negative prohibition of the use of property does not carry an entitlement to compensation. As was said by Wright, J., as he then was, in *France Fenwick & Co.* v. *R.* [1927] 1 K.B. 458: "I shall assume that the Crown has no right at common law to take a subject's property for reasons of State without paying compensation. I think, however, that the rule can only apply (if it does apply) to a case where property is actually taken possession of, or used by, the Government, or when, by the order of a competent authority, it is placed at the disposal of the Government." In some cases where restrictions on land use have been imposed by statute, the State has rested on its common-law rights to control use without compensation, and no compensation has been given for statutory control, e.g., by building byelaws under the Public Health Acts, while in others this common-law right has been abandoned and a right given to compensation.

The Town and Country Planning Act, 1932, by s. 18, gave a general right to compensation for injurious affection arising from the coming into operation of a planning scheme, but by s. 19 provided procedure whereby this right could be excluded in a great number of cases. Thus a scheme could provide that no compensation should be payable in respect of a provision prescribing the space about buildings or limiting the number of buildings. An authority could, in country areas, virtually prohibit building development on land without compensation by zoning the land in a rural zone which in effect allowed building at a very low density, e.g., by requiring any house to be built to have a curtilage of at least five acres, or by allowing only one house to twenty acres. Again, compensation could be excluded, subject to safeguards, *inter alia*, for an existing use, in respect of a restriction in a scheme on the manner in which buildings might be used.

The principles upon which the State does or does not give compensation for a negative restriction on the use of land imposed by statute are not very clearly defined, but the Uthwatt Committee, in their Final Report, 1942 (Cmd. 6386), wrote: "Cases exist where this common-law principle," i.e., that no compensation is payable for negative restriction, "is modified by statute and provision is made for payment of compensation. The justification is usually that without such modification real hardship would be suffered by the individual whose rights are affected by the restrictions, but there is no right to compensation unless that right is either expressly or impliedly conferred by statute." In their explanatory memorandum on the Bill which became the Act of 1947 the Government stated that they "take the view that owners who lose development value as a result of the passing of the Bill are not on that account entitled to compensation. They recognise, however, that, if no payments were made, hardship would be caused in many cases, and they have decided that a capital sum should be made available out of which payments may be made to landowners." This capital sum is the £300,000,000 fund.

There is nothing in this history which shows a revolution, but rather, as in the case of the control of use, only an evolution. The principles of compensation remain the same after as before the Act of 1947. The State does not acquire any part of the owner's property or any right, for if it did so the owner should be entitled to compensation as of right. All he gets under the Act is a right *to claim* a payment for *depreciation of land value* by reason of the control coupled with development charge imposed by the Act, not a right to *compensation* for the *acquisition of development rights* by the State. Under the previous law, on the coming into operation of a planning scheme, in effect, owners in some cases were entitled to be paid the whole of the depreciation suffered while in others they were excluded from obtaining any payment at all, however hard the individual case; under the new law all may claim, and payment will be made on a general basis of hardship and not on a division into compensation and no compensation cases. (It must, however, be noted that in calculating depreciation of value for the purposes of the 1947 Act the effect of ss. 18 and 19 and also 20 of the 1932 Act will be a relevant consideration.)

Before leaving this aspect of the 1947 Act it is only right to point out that the Uthwatt Committee considered that a point might be reached at which restrictions imposed might extend beyond the obligations of neighbourliness and become equivalent to an expropriation of a proprietary right or interest, and therefore, it would be claimed, should carry a right to compensation as such. Though it might well be argued that the restrictions in the 1947 Act amount to such an expropriation and that all owners taken as a body are entitled as of right to a sum of £300,000,000, we have tried to show that the Government's policy and the machinery for carrying it out have been so framed that there is in fact no such expropriation. In this connection it is interesting to note that the Act (s. 19) imposes an obligation to purchase land where the refusal of development permission makes the land incapable of reasonably beneficial use, i.e., virtually expropriates the land.

We must now look at the other financial aspect of the 1947 Act, namely, development charge. Though at first sight the development charge does appear to be a revolutionary feature, it has, just as the other provisions of the Act, evolved from the earlier law. By s. 21 of the 1932 Act, where, by the coming into operation of any provision contained in a scheme, or by the execution by a responsible authority of any work under a scheme, any property was increased in value the authority could, subject to the provisions of the Act, recover from the owner 75 per cent. of the increase. It is generally realised that where land is increased in value by some work carried out at public expense it is reasonable for the public authority concerned to be able to recover the increase, but the 1932 Act enabled betterment to be recovered not only for positive work under the scheme but also for increased value due to negative restriction, e.g., where the scheme increased the demand for land zoned for building by restricting building on other land. In fact, these provisions were so hedged around with safeguards for owners, including one that betterment should not be recovered until it was realised by the owner, that they were of little use. Now the 1947 Act intensifies the control and restriction of land use and therefore increases the demand for and consequently the value of land on which development is permitted, and the increase in value is recovered as development charge. The development charge is not, however, in principle, very dissimilar to the earlier "betterment." It will, as we have seen (92 SOL. J. 329), normally be 100 per cent. of the development value, which will in itself be greater owing to the restriction to existing use, and not 75 per cent., but the owner will still not have to pay it until he wishes to realise the increase by carrying out his development. In this aspect of the Act, then, as in the other two already considered, it is suggested that there has been no revolutionary change in the tenure of land.

In the last part of this article we will consider the answers which should be given to the three questions set out at the beginning of the first part and to the general question in the heading.

R. N. D. H.

Divorce Law and Practice

ESTOPPEL IN DIVORCE

Two recent cases in which judgments were delivered by Lord Merriman, P., have brought to the fore a question of evidence in divorce cases which is of considerable interest but one which, the President himself admits, is of great difficulty. In both *James* v. *James* [1948] 1 All E.R. 214, which was a decision of the Divisional Court hearing an appeal from a decision of justices, and in *Hudson* v. *Hudson* [1948] W.N. 158, which was a decision at Leeds Assizes, the question of estoppel in matrimonial cases was raised. Before embarking on a discussion on the points that arose in these cases it may be as well to draw attention to one aspect of estoppel in relation to divorce matters in which there is an important distinction from estoppel in ordinary civil cases. This distinction was clearly brought out by Cozens-Hardy, M.R., in *Harriman* v. *Harriman* [1909] P. 123, when discussing the effect between the parties of a previous decree of judicial separation on the grounds of cruelty. He said, at p. 131: "What is the effect of a judicial separation on the ground of cruelty? . . . It may perhaps operate by way of estoppel *inter partes*, so as to prevent the husband thereafter denying that he has been guilty of cruelty, though I desire to express no opinion on the point. It cannot in any way estop the court. For the jurisdiction in matters of divorce is not affected by consent. No admission of cruelty or adultery, however formal, can bind the court. The public interest does not allow parties to obtain divorce by consent, and the analogy of ordinary actions cannot be applied." In other words no question of estoppel can arise in such a way as to have the effect of depriving the court of the right to do what it is its most important duty to do, namely, to investigate all the relevant facts when a charge is made by one spouse against the other. That is a most fundamental principle and one which must not be forgotten when discussing the question of estoppel in divorce.

In *James* v. *James*, the more important of the two cases mentioned above, the facts were as follows. At the hearing before a judge of assize of a husband's petition for divorce on the grounds of his wife's adultery, both the wife and the co-respondent denied adultery and the petition was dismissed. Subsequently the wife brought proceedings before justices alleging wilful neglect by the husband to maintain her, and the husband in answer made the same charges of adultery on substantially the same evidence. Notwithstanding that the attention of the justices was drawn to the finding of the judge of assize, they dismissed the summons, presumably, though not expressly, on the ground either that the wife had committed adultery or that the husband had reasonable grounds for suspecting that she had done so. On these facts the court held that the justices should not have dismissed the summons. It is quite clear from the judgment that the decision was made on the ground that the court considered that, on the facts that were before the justices, it was impossible to find that the wife had committed adultery. In giving judgment Lord Merriman, P., also made it clear that that being the *ratio decidendi* what he subsequently said with regard to estoppel and *res judicata* was *obiter*. There can, however, be no doubt that it was *obiter dicta* of the most weighty nature, and that what he did say was of the greatest importance. He came to the conclusion that the decision of the judge who had heard the petition and who had found that the wife had not committed adultery was a decision of a court of record and that therefore the matter was *res judicata* and the justices should, on having their attention drawn to the previous decision, have inquired no further into the question of the wife's adultery. In coming to this conclusion, the learned President brought out two points which deserve attention. He considered that it might well be that had the decision of the judge who had heard the petition been a finding in a positive sense that there had been adultery and not a finding in a negative sense that there had not been adultery, then he might have been of the opinion that such a decision did not preclude the justices from looking into the matter again. But he purposely left the point open. The learned President also made it quite clear that the fact that what was relied on to estop the parties in *James* v. *James* was a decision of the High Court and not a decision of a summary court was not the factor that distinguished it from *Harriman* v. *Harriman*. He said, at p. 216: "In my opinion that decision (*Harriman* v. *Harriman*) does not depend on the fact that what was being put forward as an estoppel in the High Court was a decision of a court of summary jurisdiction."

That there is a distinction between cases in which the estoppel relied upon is a previous decision of some court to the effect that some matrimonial offence was not proved and cases in which the previous decision is one in which the offence is held to be proved is shown by *Pratt* v. *Pratt* (1927), 71 SOL. J. 433, and an old authority, *Finney* v. *Finney* (1868), L.R. 1 P. & D. 483. In the latter case it was held that where a wife had petitioned for judicial separation on the ground of cruelty, and it had been decided that the charge was not proved, then the wife was estopped from setting up the same charges of cruelty coupled with adultery in a subsequent petition for dissolution.

Hudson v. *Hudson*, the second of the cases mentioned at the outset of this article, was a case in which it was sought to estop a party to divorce proceedings by means of a previous decision of a court of summary jurisdiction which had held that a matrimonial offence had been committed. The facts of this case were that in November, 1946, a court of summary jurisdiction at Otley had held that the husband had treated the wife with cruelty, and this decision had been subsequently affirmed on appeal to the Divisional Court. The wife thereupon presented a petition for divorce on the ground of cruelty. By his answer the husband denied the cruelty alleged and himself alleged adultery against the wife. The wife had then in her reply alleged that her husband was estopped from denying the cruelty by reason of the previous decision. In giving his judgment on the preliminary issue of estoppel the learned President came to the conclusion that in this case there was no estoppel and the extract of the judgment in *Harriman* v. *Harriman* quoted above was again referred to, and he went on to say that it was not enough merely to produce an order and to say that an offence had been established. The petitioner must be sworn and, being sworn, would be liable to further questioning. He then quoted a further passage from *Harriman* v. *Harriman*, "the production of a decree of judicial separation on the ground of cruelty is not as a matter of law sufficient to make it the judicial duty of the court to accept as a fact that the respondent had been guilty of such cruelty . . ." From that it became plain that where it was sought to rely on a previous finding of a particular offence in support of a petition for divorce there could be no estoppel *per rem judicatam*. His lordship ended by pointing out that the proper course in a case of this kind was to conduct the investigations in the usual way of contest *inter partes*. In other words he upheld the basic principle that was put forward at the start of this article that in divorce cases, although the parties might be estopped *inter se*, no estoppel could bind the court.

In conclusion, it may help to clarify the law on these matters as it now stands if the propositions which, it is respectfully submitted, the somewhat complex mass of cases on the subject decides, are put forward again in recapitulated form:—

1. If it is sought to rely on a previous decision of some other court on the same facts which are at issue in the case being considered it must be remembered that there is a basic distinction between the cases in which the previous case decided that a matrimonial offence had been proved and the cases in which it had been held that the offence had not been proved and that the charge had been dismissed.

2. If it has been decided by the High Court that a charge of a matrimonial offence brought by one spouse against another is not proved and the petition is dismissed so far as that charge is concerned, then the petitioner will be estopped from putting forward a charge based on the same facts as the basis for a subsequent petition. This is probably so even if the original case was one brought in a court of summary jurisdiction. If, of course, new facts come to light after the original decision then different considerations may apply.

3. If it has been held by any court that certain facts do constitute a matrimonial offence, then if, based on these same facts, some different remedy is sought, the party against whom the charges are made is not estopped from denying the charges; for to say that such a person was estopped would in effect be the same as to say that the court was prevented from performing its duty of investigating the charge.

P. W. M.

DAMAGES FOR DEATH AND PERSONAL INJURY

REPORTS in the Press have drawn attention to the very substantial damages which are sometimes recovered by a plaintiff in respect of personal injuries caused by the defendant's negligence, and it may be of interest to practitioners to consider how far current practice establishes a tariff in these matters. Needless to say, each case has to be considered on its own particular merits and no two judges are likely to fix precisely the same amount on one given set of facts, but there are certain principles customarily applied by insurance companies and large transport undertakings when making an offer to settle out of court, and these principles naturally reflect the experience of those undertakings in cases where the amount of damages has been judicially assessed.

The lay plaintiff must be warned against over-optimism. The cases which warrant headlines in the press are naturally the exceptional ones and awards of £20,000 and over must still be regarded as unusual. The courts have, however, taken account of the diminishing purchasing power of the pound sterling and of the reduction in income yields from trustee securities and this has given rise to a general increase in awards for all personal injuries.

Ten years ago the loss of a single arm or a single leg with its consequent incapacity and loss of amenities might have resulted in the plaintiff recovering £2,000. Now the basic figure is between £3,000 and £4,000. This figure will rise if the plaintiff is a professional footballer and fall if he is a clerk in a city office. For the loss of a single eye the plaintiff may expect up to £1,500 if his earning capacity will not be substantially affected and more if it will. In 1947 the sum of £6,000 was awarded for total blindness and £3,000 has been awarded for total deafness. In all these cases the age of the plaintiff must be taken into account, for the older he is the shorter is the period for which the incapacity is likely to affect him, and the amount of his loss is reduced accordingly.

The loss of two hands has been assessed at £10,000, and the loss of the sense of taste or smell has resulted in the injured person recovering £500 to £750.

Where injuries are so severe that the plaintiff becomes permanently bedridden and is not only unable to earn his living but is also unable to minister to his own needs a very substantial sum will be awarded. £15,000 is now quite common in such cases and the record is thought to be in the neighbourhood of £25,000.

Where the defendant's negligence has resulted in the death of the injured person different considerations arise. The Law Reform (Miscellaneous Provisions) Act, 1934, displaced the common-law rule that the estate of a deceased person was not entitled to damages against the tortfeasor for causing the death and it is now settled that the deceased's personal representatives are entitled to sue in right of their deceased. In the years which immediately succeeded the passing of this Act there was considerable divergence of judicial opinion as to the amount to be awarded for the deceased's "loss of expectation of life," but after *Rose* v. *Ford* [1937] A.C. 826, a figure of £1,000 was regarded as the standard. The modern tendency is to assess damages on the basis of "loss of expectation of happiness" rather than expectation of life and the latest authority is that of the House of Lords in *Benham* v. *Gambling* [1941] A.C. 157, as a result of which the damages payable to the estate of the deceased, as such, under the Act of 1934, are likely to be between £200 and £350 and may be reduced below those figures if the deceased was very young or very old. These damages are recoverable for the benefit of the deceased's estate and bear no relationship to the pecuniary loss which may be suffered by his family as a result of the death of the breadwinner. Compensation for dependants is still provided for by the Fatal Accidents Acts, and in consequence the death of, for example, a husband and father often gives rise to claims under the Act of 1934 and under the Fatal Accidents Acts. Both claims are normally brought by the personal representatives of the deceased and one writ may be used.

The basis of a claim under the Fatal Accidents Acts is dependency, and in assessing the amount of the claim one starts by estimating the annual income derived by the dependants from the deceased. This sum is capitalised on the basis of a number of years purchase, of which the maximum for a young and healthy individual would be about 20. The capital value of the dependency being arrived at, certain deductions must be made, for, with certain exceptions created by statute, any benefit accruing to a dependant by reason of the death must be taken into account when assessing the damages payable to that dependant under the Acts. Thus, although money payable under policies of life assurance on the deceased's life are disregarded, other moneys coming to the dependant from the deceased's estate must be taken into account, and if the dependants and beneficiaries under the deceased's will are the same persons it will often happen that damages payable under the Act of 1934, by increasing the value of the estate, decrease proportionately the amount payable under the Fatal Accidents Acts. This situation is discussed by the House of Lords in *Davies* v. *Powell Duffryn Associated Collieries, Ltd.* [1942] A.C. 601. The latest statutory contribution to this subject is the Law Reform (Personal Injuries) Act, 1948, by s. 2 (5) of which any benefits arising under the National Insurance Act, 1946, are not to be taken into account by a court assessing damages under the Fatal Accidents Acts.

A brief illustration may help to explain these principles. A commercial traveller aged 30 is killed in a motor accident which was entirely the fault of another driver. His average earnings were £8 per week, he was the sole support of his wife and infant child and he died intestate. His estate consists of a life policy for £1,000 and other assets worth £600. When his personal representatives have been appointed they may sue for: (*a*) damages for loss of expectation of happiness: say £300; and (*b*) damages under the Fatal Accidents Acts on behalf of the two dependants. The widow's dependency may be £5 a week at, say, 15 years purchase, or a capital sum of £3,750. The child's dependency will be about £1 per week until it reaches the age of 16, say £400, and from this must be deducted the Law Reform Act damages of £300 and the value of the estate (other than the life policy), £600. The widow and child will then be left with the following assets: life policy, £1,000; balance of estate, £600; Law Reform Act damages, £300; Fatal Accidents Acts damages, £3,250; plus any benefits to which they may be entitled under the National Insurance Act, 1946.

From the point of view of the dependants it is an advantage if the ratio between Fatal Accidents Act and Law Reform Act damages respectively is high, for the former do not attract death duties whilst the latter do.

J. P. W.

LAND REGISTRY PRACTICE—II

APPLICATION FORMS

IN a previous article on this topic (92 SOL. J. 186) I said, *inter alia*, that if the first proprietor is not entitled, for his own benefit, the title is subject to the equities of which he has notice.

The Act uses the words "minor interests" and not equities, and the latter, being a familiar friend, was used as a rough translation of "minor interests." The definition in s. 3 of the Act of "minor interests" is long, and s. 101 (which states the effect of dealings off the register) creates a whole lot of them. It would, therefore, be misleading to say that minor interests and equities are co-extensive; but for the purpose of describing the estate of a first-registered proprietor, "equities" is a moderately correct equivalent of minor interests.

Optional registration of title cannot be done cheaply or quickly, for two reasons. One is that applications relate to land scattered all over England and Wales, and the Ordnance Survey cannot keep the maps of such a large area up to date. The other is the natural tendency of landowners to register titles which are nasty from a legal point of view, either because the title is long or because there is some defect or question of doubt which registration might cure. But, if registration is compulsory over a limited area, the relevant map will be up to date, and the nice titles will help to pay for the nasty ones. Moreover, in a compulsory area, the Registry becomes familiar with some titles of the larger landowners; and when it is found that Lord So-and-So sold 1,000 acres on a particular date, it is worth while to make a note of this so that, when some other part of that 1,000 acres comes in for registration, Lord So-and-So's title to sell need not be investigated again. There are limits to the utility of this device, and it is not worth while unless further registrations of parts of this 1,000 acres are to be anticipated within the next few years.

Registration of title was made compulsory on sale in London over forty years ago. Eastbourne came in in 1926. Hastings followed suit in 1929, Middlesex in 1937, and Croydon in 1939. These areas are commonly called compulsory areas, and the rest of England and Wales is a voluntary area.

The statutory forms of application in the Schedule to the Land Registration Rules, 1925, are reasonably self-explanatory, and an applicant need use no other. But the Registry has got out some fuller forms inviting information which may otherwise be required, and the use of these smoothes the applicant's path. They can be obtained from the law stationers. The Registry does not issue forms on payment or otherwise.

Forms 1A, 2A and 3A are for applications by a landowner in person. Such applications impose more responsibility upon the registrar and often cause more trouble and are not welcomed. The others are for applications by a solicitor. They are:—

No. of form	*Title applied for*	*Applicant*
1B	Absolute freehold	Purchaser, not a corporation.
1C	" "	Not a recent purchaser, and not a corporation.
1E	" "	A corporation purchaser.

Forms 2B, 2C and 2E are corresponding applications for registering good leasehold title when the applicant is not the original lessee.

Forms 3B and 3E are for registering an original lessee with good leasehold title, being an individual and a corporation respectively.

The reasons for some of the additional information which these forms invite are:—

(*a*) If an applicant is not a recent purchaser a statutory declaration is required as protection against dealings between the purchase and date of application. A "purchaser" or "recent purchaser" means, if the land is in a compulsory area, a purchaser who completed within the previous two months. Section 123 of the Act makes the conveyance void as a grant of the legal estate, unless the title is registered within two months or such extended time as the registrar may, by order, direct. Such orders are readily made if there is any reasonable ground for delay, but they cost £1 1s.

In the case of land in the voluntary areas, there is no magic in the two months. But if the land was bought some time ago, part may have been sold off and mortgages are not infrequently overlooked, and the statutory declaration makes the applicant, or his solicitor, address his mind to the possibility of such things. The statutory declaration needs no stamp (r. 316 of the 1925 Rules).

(*b*) All forms contain a statement that the boundaries are defined by physical features, or that substantial boundary posts have been erected. The object of this is to obtain a boundary mark which can be surveyed and accurately plotted. Since the war it has usually been impossible to erect substantial boundary posts, and some relaxation of this requirement became essential.

(*c*) If the land is in a compulsory area, and its value does not exceed £700 (or £1,000 if there has been a sale by auction within the last two years), r. 29 of the Rules of 1925 authorises registration of an absolute or good leasehold title on a certificate of title given by the purchaser's solicitor. This certificate is in no sense a personal guarantee of the title, and solicitors can usually give it without hesitation and nearly all do so. Accordingly, applications to register a recent purchaser embody such a certificate. It is, or was, a great assistance to the Registry, but the recent rise in values has considerably reduced the number of cases in which it can be acted on. It has no statutory force if the land is outside a compulsory area.

(*d*) At the head of all forms is a space for "a short description of property." This is a mere label to distinguish one application from another. The land to be registered should be fully identified in the body of the application by reference to the description in a deed or by a plan.

A well-drawn conveyance will, in one way or another, define both the position and the extent of the land conveyed. Unfortunately all conveyances are not well drawn. If it only describes the land as "25 Broad Street in the borough of Blank," and if it is in a compulsory area, the Registry will probably be able to fix the *position* of "25 Broad Street" because the local authorities in the compulsory areas inform the Land Registry of the re-naming and re-numbering of streets. But if "25 Broad Street" is in a voluntary area, the Ordnance Survey may not mark Broad Street, and will not show which of the many houses in Broad Street is No. 25. In either case the precise *extent* of No. 25 may be in doubt. There may be adjacent passages or yards which may, or may not, belong to "25 Broad Street," or the upper floors may be more, or less, extensive than the ground floor. In all cases, therefore, evidence of position or extent may be necessary, and a statutory declaration may be called for, to prove that the extent claimed has been occupied and held as "25 Broad Street." If a plan is used, it will, of course, show the extent, but should also show the position of the land with regard to the nearest street corner, or some other feature which can be identified on the Ordnance Survey.

In the voluntary areas frequently, and in the compulsory areas occasionally, a survey is found to be necessary. This is done by the Ordnance Survey Department at the request of the Land Registry, and the usual charge is £3 10s. At first sight it seems odd that the Ordnance Survey should charge for doing work which they exist to do, but as they have to take a man off the job he is engaged on and send him to make a survey in some other part of the country a charge is not unreasonable. In the voluntary areas the applicant for registration will have to pay the survey charge. In the compulsory areas r. 4 of the Land Registration Fee Order, 1930, puts this charge on the Land Registry.

(*e*) Most applications are accompanied by official certificates of search for land charges, and if these disclose any

registered land charges the registrar will have to ascertain their nature and whether they give notice of some interest not otherwise disclosed. This is exactly what the solicitor has had to do, and the application, therefore, invites him to give the Registry the benefit of his investigations. In fact the form invites the solicitor to say boldly that none of them affects the land in question, and only in a marginal note says what should be done if some do affect the land. The result is that the solicitor sometimes says that none affects when he really means that none discloses anything new, and if the Registry took him at his word it might ignore some land charge, because (if the solicitor's statement is accurate) it was not duly registered before the next sale. It would be better if the printed form invited also the statement that none discloses anything new, or words to that effect.

W. J. L. A.

A Conveyancer's Diary

Re DIPLOCK—III

ENOUGH has been said of the two heads under which the claims of the appellants were considered in this case to show their essential difference. A claim *in personam* on the *Diplock* principle can only be successfully set up in certain limited circumstances; the claimant must be a legatee or next of kin or creditor and the subject-matter of the claim must be property forming part of the estate of a deceased person. The necessity for this limitation on the rights of a person claiming *in personam* is purely historical; the doctrine, as established by the line of cases beginning with *Noel* v. *Robinson* (1682), 1 Vern. 92, affords a remedy only to the class of persons who bear that essential relationship to the subject-matter of their claim. On the other hand, the principles applicable to the claim *in rem* are not limited in this way, and for this reason the *ratio decidendi* of the part of the judgment covering this head of claim must be examined before the ambit of these principles can be grasped.

The right to trace into a mixed fund depends upon a right of property which is recognised in equity as vested in the claimant throughout, and not lost when the property is mixed with other property, however the "mixture" is effected. This right is defeated if the subject-matter of the claim comes into the possession of a purchaser for value without notice; that is clear, and flows from principles which underlie every equitable remedy. The question is whether there is any other overriding circumstance that will deprive the claimant of his right to trace. In his analysis of the speeches in *Sinclair* v. *Brougham* [1914] A.C. 398 the Master of the Rolls said:—

> "It is to be observed that neither Lord Parker nor Lord Haldane suggests that the equitable remedy [of tracing] extends to cover all cases where A becomes possessed of money belonging to B . . . [They] both predicate the existence of a right of property recognised by equity which depends upon there having existed at some stage a fiduciary relationship of some kind (though not necessarily a positive duty of trusteeship) sufficient to give rise to the equitable right of property. Exactly what relationships are sufficient . . . is a matter which has not been precisely laid down. Certain relationships are clearly included, e.g., trustee (actual or constructive) and *cestui que trust*; and 'fiduciary' relationships such as that of principal and agent. *Sinclair* v. *Brougham* itself affords another example . . ."

The opinions of Lord Parker and Lord Haldane are, therefore, somewhat similar to the conclusion reached, although by a different road, by Wynn Parry, J., on this part of the claim in *Re Diplock*. The latter considered that the scope of the equitable remedy of tracing was limited to the case where the "mixing" took place in breach of a fiduciary duty of some sort, and felt bound by *Hallett's* case (1880), 13 Ch.D. 696. This is not very different from the necessity of establishing "at some stage a fiduciary relationship of some kind" as a condition of relief on a claim to trace. The language is vague, but I think it must be conceded that, whoever the other party to the "fiduciary relationship of some kind" may be, the first party must be the claimant. On either view, therefore, a successful claimant *in rem* is entitled to his remedy, because he is a person to whom some other person, having the disputed property in his hands at some stage, owes some sort of fiduciary duty.

The Court of Appeal in their judgment in *Re Diplock* nowhere dissent from the opinions expressed by Lord Parker and Lord Haldane in the earlier case, and it must, I think, be presumed that a sufficient fiduciary relationship was there held to exist at some stage of the dealings between the various parties. On the other hand, there is no finding in terms to that effect. The nearest approach to a determination on this point (which must be regarded as cardinal to the decision) is to be found in some observations on the applicability of *Clayton's* case (1816), 1 Mer. 572, to the relief sought against one of the respondent charities, and is in a contrary sense. After saying that that rule had been applied in the case of two beneficiaries where trust money had been paid into a mixed banking account from which drawings were subsequently made, the Master of the Rolls continued:—

> "In such a case both claimants are innocent; neither is in a fiduciary relation to the other, and if the mixed fund had not been drawn upon they would be entitled to rateable charges upon it. Exactly the same occurs where the claimants are not two beneficiaries, but one beneficiary and one volunteer, and we think, accordingly, that the same principle should be adopted."

In this passage it is clear from the context that the word "claimants" is used to mean persons entitled to a charge on a mixed fund, and in this sense the charities were claimants in *Re Diplock*; the decision was that where a mixed fund was found in the hands of any of the respondents, made up partly of *Diplock* money and partly of money belonging to the respondent in question, the latter was entitled to a rateable charge on the mixed fund ranking *pari passu* with the charge of the appellants. Nothing, therefore, turns on this point, and the result is that there is an apparent inconsistency between what seems to be an acceptance of the limiting factors discerned by Lord Parker and Lord Haldane as applicable to the right to trace into a mixed fund, and a virtual finding that in the particular circumstances of the case these factors did not exist.

Apart from this, the nature of the fiduciary relationship required by *Sinclair*, v. *Brougham* has its own difficulties. In that case the issue was between shareholders and depositors in a society whose directors had carried on a banking business which was *ultra vires* the society. The directors, as such, were not before the court, but the essential fiduciary element was apparently found to exist between the depositors and the directors; there was certainly nothing of that kind between the shareholders and the depositors. With respect to the august tribunal which decided that case, this seems to me to be a shadowy circumstance on which to found a claim. In this respect the issue in *Re Diplock* was, on the facts, much simpler. The executors who made the mistaken payments went out of the picture when the action instituted against them by the next of kin was compromised, and there were then left only the next of kin and the charities. Perhaps the essential fiduciary element may be traced to the rights and duties of the next of kin and the executors *inter se*, on the analogy of the rights and duties of the depositors and directors in *Sinclair* v. *Brougham*, but if that is so it is nowhere expressed in the judgment.

Finally, it should be noted that the liability of the charities on the claims *in rem* was reduced by a proportionate deduction equal in sum to the amount which the next of kin had recovered in their action against the executors. To this extent the claims *in rem* were treated on exactly the same footing as the claims *in personam*.

"A B C"

Landlord and Tenant Notebook

RENT RESTRICTION: THE CROWN

THE decision of the Court of Appeal in *London Territorial and Auxiliary Forces Association* v. *Nichols* (1948), 92 SOL. J. 455, in which premises held of the plaintiff association were held not to be protected by the Increase of Rent, etc., Restrictions Acts, was what, having regard to earlier decisions on the question of Crown immunity in such cases, one expected. But the judgment of the court delivered by Scott, L.J., contains a certain provocative passage of which more will, I dare say, be heard, e.g., if and when a question should arise whether the tenant of a dwelling-house formerly owned by a railway company has been deprived of protection as a result of the nationalisation of those undertakings.

The principle underlying the immunity of the Crown appears to be one of construction rather than of constitutional law. It is usually expressed by a maxim, and those who have occasion to cite this generally have to brush up their Norman French and practise pronouncing "*Roy nest lie par ascun statut si il ne soit expressment nosme*" before going into court. Once this difficulty is overcome, it would seem at first sight that there ought to be none in applying the principle to any facts that might present themselves.

But the decisions show that the matter is not always so simple, and judgments delivered rarely confine themselves to the syllogism "No Act which does not name the Crown binds the Crown; this Act does not name the Crown: therefore, this Act does not bind the Crown." The first reported Rent Act case appears to be that of *Clark* v. *Downes* (1931), 145 L.T. 20, which arose in this way. Leaving out of consideration circumstances relevant to an issue of decontrol, the facts were that the defendant had taken a tenancy of a hut belonging to the then Office of Works, one which had been erected for munition workers during the first World War, in 1924. The Crown sold the property in 1928 and the purchasers granted a concurrent lease to the plaintiff, who determined the defendant's tenancy and sued for possession. Holding that the tenancy was not protected despite the sale of the reversion, the Divisional Court assigned these reasons: (1) the exemption of the tenancy when created made the reversion more valuable than it would have been if the grant had been by a private person, and (2) the provision of s. 12 (10) of the Act of 1920 (expressly applying the Act to houses requisitioned for the purposes of housing war workers) would have been unnecessary if the Act did apply to the Crown. The significance of this second point is that, in spite of the requirement of "*expressment nosme*" in the maxim, the court appeared to be prepared to contemplate exemption or non-exemption by implication (as to the subsection itself, I would suggest that it reads rather as if intended to give certain licensees the status of tenants).

About a year later, the Court of Appeal approved the above decision, but also distinguished it, in *Wirral Estates, Ltd.* v. *Shaw* [1932] 2 K.B. 247. The claim concerned similar property, but the landlords had managed, after purchasing it from the Crown, to determine the tenancy and let the house to the (same) tenant at a higher rent. This proved to be their undoing as far as protection was concerned; for it was held that the exemption could only be extended to the duration of the tenancy which was in existence when the Crown divested itself of its property.

More recently we had *Rudler* v. *Franks* [1947], K.B. 530, an appeal by Case Stated. The appellant, who held a lease of agricultural property from the Commissioners of Crown Lands, had sub-let a cottage to the respondent and, having determined the sub-tenancy, sought a warrant under the Small Tenements Recovery Act, 1838. The justices considered that the sub-tenant was protected, as the Crown was not a party to the sub-tenancy. The Divisional Court allowed the appeal, basing their judgment on two propositions: (1) the Acts operated *in rem*, and (2) the rights of the Crown would or might be affected since, if it sold the reversion, it would probably obtain a lower price if the Acts applied, as the purchaser would not be able to obtain vacant possession.

The facts of *London Territorial and Auxiliary Forces Association* v. *Nichols* were that the plaintiff corporation, constituted under the Territorial and Reserve Forces Act, 1907, in accordance with a scheme made by the Army Council (s. 1), was empowered to exercise powers and duties connected with the organisation of His Majesty's military forces transferred or assigned to it by order of His Majesty by regulations (s. 2) providing, *inter alia*, for the acquisition and disposal of land for the purposes of the Act (s. 4 (1) (*b*)); and it had, acting under those regulations, let a flat (normally occupied by a member of the Territorial Forces) to the defendant at a time when, owing to the war, the premises in question were redundant. On these facts it was held, both at first instance and on appeal, that the tenancy was not protected; but what is of particular interest is, I suggest, the importance attached by the judgment to the close connection between the Crown and the Association. This shows that while it may not be possible to contend that the Crown is bound by a statute which does not *expressly* name it, the question whether the rule applies to a particular party may be arguable. When Scott, L.J., said that the Army Council "shared" the Crown's immunity except in so far as the contrary intention appeared expressly or by necessary implication from the statute in question, and went on to say that the contrary intention did not appear in the Rent Restrictions Acts, this would appear not to be consistent with the Norman French maxim. If the learned lord justice had gone on to say that the statute in question was the Territorial and Reserve Forces Act, 1907, this part of the judgment would have been more easy to reconcile with that maxim and with a later passage: "a territorial association was *a direct* emanation from the Crown entitled as such to its immunity from the operation of the Rent Restrictions Acts . . . in particular . . . when it let to an ordinary member of the public . . . premises which were redundant or for the time being unused . . . for in so letting premises it was acting *in pursuit of* a purpose of the Crown."

"Direct" and "in pursuit of" are relative terms, and whether they apply to emanations and activities are at least partly questions of fact. Hence, one result of the nationalisation of railways, electricity undertakings, etc., may be litigation centring on the issue whether they are direct emanations from the Crown or not, and whether in letting dwelling-houses (railway companies were landlords of many dwelling-houses within the Acts, and these lettings have figured in some leading cases), they act in pursuit of a purpose of the Crown. In the case of properties the reversion of which has been assigned to a new statutory body, a further question, whether immunity could be claimed in view of the operation of the Acts *in rem*, may also be raised. R. B.

TO-DAY AND YESTERDAY

LOOKING BACK

THERE is an interesting entry in the diary of Sir Samuel Romilly on 21st August, 1807: "I left town for the Long Vacation, intending to pass it at Cowes in the Isle of Wight, with my family. I have some cases which I have been unable for some time past, during my close attendance in court, to answer; these I very reluctantly take with me to the country; but I am determined not to let any fresh cases be sent after me. If I were to suffer this, I should have full occupation, and occupation of a kind extremely disagreeable to me, during the whole vacation. The truth is that, for the last two or three years, I have declined, as much as I well could, the giving of opinions. It is so important that one's opinion should be right (for in many cases it has the effect of a decision to the parties, and in others it involves them in expensive litigations) and at the same time it is so difficult, in the state of uncertainty which the law is in, to satisfy one's mind

upon the questions put to one; and in many cases it must depend so much upon the particular mode of thinking of the judge, before whom the question may happen to be brought, what the decision will be, that I have long found this to be the most irksome part of my profession." A few days later he wrote to a friend that, after ten hours a day in court, besides late nights in Parliament, he was enjoying "for some weeks at least the greatest of earthly blessings—the most perfect calm and tranquillity in a beautiful country and with those who are dearest to me in the world."

RESCUE AT SEA

HARD on the news of the disappearance and recovery of the "Gleam," the Bermudian sloop belonging to Mr. Ewen Montagu, K.C., Commodore of the Bar Yacht Club, came the wreck of the "Gull," an 18-ton cutter belonging to Mr. George Pollock, also a member of the club. With a fellow barrister and their children he was sailing from Guernsey for Southampton when the yacht was caught in the disastrous gale that did so much damage by land and sea. Great waves swept her and the cabin was deep in water. The mainsail was ripped leaving only the staysail and jib. An attempt to make Newhaven failed and she was driven towards the beach in Seaford Bay. Reports of her distress signals had brought out the Shoreham lifeboat which drew alongside and got everyone safely off. It was touch and go and there were only minutes to spare before the "Gull" ran ashore, there to be pounded by the waves. It was a terrifying experience, but not so prolonged as the adventure of Serjeant Sullivan in August, 1931, to which I alluded last week. With five friends he set out from England in his yacht to sail to Bantry Bay. On the way he encountered strong north-westerly winds. The vessel shipped great quantities of water and was hove to for four days before she was sighted by the Ballycottin lifeboat which happened to be out on her annual machinery test. They were then about 8 miles out. The lifeboat escorted the yacht for 5½ miles and then towed her into Ballycottin Harbour.

A SAILOR JUDGE

THE English do not generally think of the Irish as sailors, but there is a strong tradition of seamanship in the sister island. Maurice Healy in his book on the Munster Circuit draws a delightful picture of old Mr. Justice Boyd: "He looked like Raphael's conception of Saint Joseph or, perhaps, what Raphael might have conceived a nautical Saint Joseph to be, for Boyd was every inch a sailor. When I was recruiting in the vicinity of Howth in 1915 I called at his summer residence. I think he was then retired from the Bench and he was certainly well over eighty. The afternoon had been stormy to a degree; not a boat had put out. The maid said the judge was not at home, but a roar came from an inner room: 'Is that Maurice Healy? I *am* at home; don't mind that girl. I'm changing my breeches; I got soused in the bay this afternoon.' He had taken his boat out single-handed in a storm that had affrighted younger men. I never think of him as having died. He ought to have been caught up in a fiery chariot." As a judge Boyd was fearless and uncompromising, and in the troubled days in which he administered justice in Ireland the authorities at one time thought it necessary to impose on him the protection of a couple of detectives. In the year of Queen Victoria's Jubilee he grew tired of this, boarded his yacht without leaving word where he was going, cruised about the South Coast of England for a few days and then put into a West Country port. When he rowed ashore he found his two detectives, by some magic intuition, waiting on the quay. Even he could not shake them off the path of duty.

Notes from the County Courts

THE AGRICULTURAL WORKER'S RENT

A POINT of far-reaching significance for farmers and their employees was recently contested in the Derby and Long Eaton County Court before His Honour Judge R. A. Willes. The facts in *Long Eaton Co-operative Society* v. *Smith* were not in dispute, and may be shortly set out. The defendant was employed by the plaintiffs as an agricultural worker. In 1943, when he had already been engaged in that employment for some two years, the defendant applied to the plaintiffs for the tenancy of one of a number of dwelling-houses, the property of the plaintiffs. Apparently the ownership of this property was an enterprise unconnected with the plaintiffs' agricultural activities. One of these houses was then allotted to the defendant and let to him at a rent of nine shillings a week. In January, 1948, the plaintiffs terminated the defendant's contract of employment and shortly thereafter served upon him a valid notice to quit the house. The plaintiffs' claim in the action was to possession of the house which they now required for another employee. This part of the action was eventually settled and an order made for possession upon an agreed date. The dispute arose upon the defendant's counter-claim.

Orders made by the Agricultural Wages Board under the Agricultural Wages (Regulation) Act, 1924, have the effect of establishing statutory minimum wages payable to various categories of agricultural workers. The defendant was in fact throughout his service with the plaintiffs paid wages at the statutory minimum rate appropriate to his case. But the Act and the regulations and orders made under it further restrict contractual freedom between the agricultural worker and his employer by defining "the benefits or advantages . . . which may be reckoned as payment of wages in lieu of payment in cash and the value at which they are to be reckoned" (s. 8 (1) (*a*)). Here the relevant order included the provision of a dwelling-house among the defined "benefits or advantages" and allowed it to be valued at six shillings a week. By s. 7 (10) of the Act it is enacted that: "Any agreement for the payment of wages in contravention of this Act, or for abstaining to exercise any right of enforcing the payment of wages in accordance with this Act, shall be void." It is important to point out that at no time during the currency of the defendant's tenancy was there any attempt on the part of the plaintiffs to deduct from the defendant's weekly pay packet any sum in respect of the rent due for the house—and this though the defendant was in fact frequently in arrear with the rent payments.

The defendant now asserted that, as a matter of law, the contract of tenancy, in so far as it provided for the payment by him to his employers of a rent exceeding six shillings a week, was void, and counter-claimed a sum representing the amount which, upon that basis, he had overpaid.

The argument for the defendant rested on the authority of *Williams* v. *Smith* [1934] 2 K.B. 158. The headnote to that case reads:

> "A worker in agriculture under his contract of service received his proper statutory wages in full. Under a separate agreement with his employer he paid back to his employer £1 each week for board and lodging with him, 15s. being the maximum amount fixed by statutory order under s. 8, subs. 1 (*a*), of the Agricultural Wages (Regulation) Act, 1924, as the value of that benefit or advantage which could be reckoned as payment of wages instead of payment thereof in cash. The worker was free to lodge elsewhere, and the employer would have preferred him to do so:—
>
> "*Held*, that as the employer had allowed the worker to board and lodge with him he might not receive from him more than 15s. per week in respect thereof, although in form the contract to pay more was distinct from the contract of service."

It was contended that, on this authority, the delegated legislation under s. 8 (1) (*a*) must, in effect, be taken as totally prohibiting the provision by an employer of a dwelling-house for his agricultural employee at a rent exceeding the prescribed "value," irrespective of the actual circumstances of any particular case.

The learned county court judge energetically rejected this argument:

> "I do not think *Williams* v. *Smith* decides any such thing, nor do I think that the Minister of Agriculture has any such power, nor do I think he has enacted or attempted to enact such a prohibition and avoidance of all contracts for the tenancy of a dwelling-house existing or made between the landlord and tenant during his employment by the landlord as an agricultural worker. I think that *Williams* v. *Smith* does decide that, in whatever form arrangements are made between an employer and an agricultural worker, if the substance of the arrangement, despite its form, is that deductions from cash or repayments of cash in excess of the regulation charges allowed are in fact made when the wages are paid the arrangement is prohibited. But the substance of what happens must be that the wages paid, after treating benefits to the permitted amount as payments in cash, are not fully paid in cash.

" In the case I have to try there was no deduction from the cash wages in respect of Smith's agreed rent. He got his cash wages every week though his rent was often in arrear. The contract of tenancy was, not merely as a matter of form, but actually as a matter of fact, no part of any arrangement between the Co-operative Society and Smith to provide him with any benefit or advantage as an agricultural worker. It was not thought of until Smith had been so employed for a long time and, except that he was told that he could only have the house under the terms that he must give it up if he ceased to work for the landlords, it had no connection whatever with his contract of employment as an agricultural worker. I therefore hold that the contract of tenancy in this case is not void, nor was the making of it an offence, nor is the rent or any part of the rent lawfully charged for this dwelling-house which the tenant paid, in so far as he did pay it, having agreed to pay it, recoverable from the landlord. I therefore dismiss the defendant's counter-claim."

This is an interesting limitation on the scope of the doctrine which *Williams* v. *Smith* propounded. Lord Hewart, C.J., said in that case: " When I look at the form of this transaction and compare it with what seems to be the reality, I think the truth of the matter . . . is clearly this, that this man has no alternative but to pay twenty shillings a week for that which was defined in value as being worth fifteen shillings a week . . . I think it is a mere matter of form that the one bargain, ' I will employ you at 31s. a week ' is apparently separate from and independent of the other bargain, ' If you come to lodge in my house you shall pay me £1 a week.' "

Clear as is the distinction between form and reality, it is yet difficult to see upon what principle distinction is to be made between the transaction which in substance offends and that which is in substance harmless, when the form is in both cases the same. Lord Hewart said elsewhere in the same judgment: " The Act says that the wages committees may be required by order to define the value at which certain things are to be reckoned . . . and however hard it may seem in the particular case, I cannot help thinking that this part of the Act would be reduced to a nullity if, notwithstanding the clear words of this section, what is called an independent or a collateral bargain could be made between the employer and the employed whereby the value defined by the wages committee was exceeded."

Avory, J., puts the matter even more strongly: " I have come to the conclusion that the effect of the sections, particularly subss. (10) and (11) of s. 7 and of s. 8 of the Act of 1924, is to prohibit the agricultural worker from spending more than a certain amount upon certain matters which are described as benefits or advantages under the Act, two of those benefits or advantages being board and lodging, and that the effect of the legislation and of the regulations and definitions of the wages committee is that in this case the worker was not permitted to make an agreement for payment of more than fifteen shillings a week for his board and lodging with his employer "

No suggestion was made that the scope of these propositions must be limited in the way indicated by the learned county court judge, when *Williams* v. *Smith* was referred to in *Bomford* v. *South Worcestershire Assessment Committee* [1946] K.B. 442 (Div. Ct.); [1947] K.B. 575 (C.A.). That was a rating case decided in favour of the respondent assessment committee on a ground which it is here not material to consider, but argued for the appellant farmer on the basis that the maximum rent chargeable to employees for certain farm cottages was limited to the defined " value " in an order made under s. 8 of the Act of 1924—in this case three shillings per cottage. The validity of this premise does not seem to have been questioned. Singleton, J., said, in the Divisional Court: " . . . under the the decision in *Williams* v. *Smith*, if the farmer did let either of the cottages to the workers in them he could not charge more as rent than the three shillings a week which is deductible from their wages."

In the Court of Appeal, it was said by Tucker, L.J.: " Furthermore, it has been decided by the Divisional Court in *Williams* v. *Smith*, the correctness of which both sides accept, that, if the cottages are let, they cannot be let to the farm worker at a rent in excess of three shillings."

N. C. B.

NOTES OF CASES

COURT OF APPEAL

DIVORCE: DECREE *NISI* IN ALTERNATIVE FORM

Reder *v.* Reder

Lord Merriman, P., Bucknill, L.J., and Hodson, J. 9th June, 1948

Appeal from Wallington, J., in chambers.

Mr. Commissioner Tyndale granted the appellant husband, on the ground of his wife's cruelty, a decree *nisi* dissolving a marriage between the parties at Stepney Register Office in August, 1921, and a previous marriage of the parties at a synagogue in Poland in 1914, " whichever of the said ceremonies created the marriage." The registrar refused to make absolute a decree in that form. On appeal to him, Wallington, J., made no order. The husband now appealed.

LORD MERRIMAN, P., said that the decree was a nullity as drawn up and the appeal must be dismissed. He would have preferred to order that the decree was a nullity and remit the case to the commissioner to dispose of, but the order would be made which his brethren preferred.

BUCKNILL, L.J.—HODSON, J., agreeing—said that in his opinion the right course was for the husband to apply to the commissioner to determine which of the ceremonies had created the marriage, and to make a decree which was valid. If the husband should not be satisfied with the order then made, he could appeal. Appeal dismissed.

APPEARANCES: *Stephen Murray* (*Seifert, Sedley & Co.*); the wife did not appear and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

BUILDING LICENCE: NECESSITY FOR WRITING

Jackson, Stansfield & Sons *v.* Butterworth

Scott and Asquith, L.JJ., and Jenkins, J. 19th July, 1948

Appeal from Todmorden County Court.

On 10th May, 1946, the borough surveyor of Todmorden granted, on behalf of the Minister of Works, a licence for " repairs to garages " to be effected by the plaintiffs, a firm of builders, for the defendant, the total cost not to exceed £35. The licence was in writing in the form prescribed by the Ministry of Works. The surveyor was empowered to give the licence on behalf of the Minister under the general administrative arrangements made by the latter in order to give effect to reg. 56A of the Defence (General) Regulations, 1939. As the work went on the firm realised that the total cost would exceed £35. They thereupon obtained from the borough surveyor oral permission to complete the work, provided that the total cost did not exceed £100. That oral licence was confirmed in writing by a " supplementary licence " issued by the borough surveyor in April, 1947. The work was completed at a total cost of £69 18s. The defendant refused to pay that sum on the ground that the work in excess of the £35 limit was unlicensed and therefore illegal. The county court judge gave judgment for the firm for the sum claimed, and the defendant now appealed.

By reg. 56A (2), certain types of work, which include that in question, " shall be unlawful except in so far as there is in force in respect thereof a licence granted by the Minister of Works." By art. (6) persons concerned in the doing of work in contravention of art. (2) are guilty of an offence punishable, under art. (6A), by fine and imprisonment. (*Cur. adv. vult.*)

SCOTT, L.J.—ASQUITH, L.J., agreeing—said that " a licence " in art. (2) meant a written licence. The work in excess of £35 was, therefore, illegal, and the balance of £34 18s. irrecoverable. The words in art. (2) " there is in force " should be read as " there is then in force." Therefore the supplementary licence in writing issued in April, 1947, could not operate retrospectively to legalise the excess work. His lordship concluded with observations on the power of the Minister of Works to issue circulars legislative, as distinct from merely administrative, in effect, expressing doubts as to the legality, as distinct from the mere convenience, of delegation by the Minister of Works to local authorities of his powers of granting building licences.

JENKINS, J., dissenting on the main point, said that nothing in reg. 56A, either expressly or by necessary implication, compelled art. (2) to be construed as requiring that the building licences under the regulation, which prevented work from being illegal, should be in writing. A regulation creating a new offence punishable by fine and imprisonment should be construed strictly in favour of the subject. Moreover, it was desirable in the public interest that contracts should be observed. The defendant having had the benefit of the work done by the plaintiff firm, the court ought not to regard a purely technical breach of the regulation, involving no public injury, as sufficient ground for absolving the defendant from his otherwise undoubted

obligation to pay for work done to his property at his request. Appeal allowed.

APPEARANCES: *F. Beaton* (*Lake & Son*, for *G. M. C. Thompson*, Hipperholme, Halifax); *W. K. Carter* (*Williamson, Hill & Co.*, for *Eastwoods, Sutcliffes, Sager & Gledhill*, Todmorden); *The Attorney-General* (*Sir Hartley Shawcross*, K.C.) and *Colin Pearson* (*Treasury Solicitor*), as *amici curiæ* for the Minister.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTION: FURNISHED PREMISES: REPAYMENT OF EXCESS RENT

Roppel *v.* Bennett; Same *v.* Davies and Another

Tucker, Bucknill and Somervell, L.JJ. 23rd July, 1948

Appeals and cross-appeals from Clerkenwell County Court.

The plaintiff landlord claimed from the defendant tenant possession of premises which, she contended, were not within the Rent Restrictions Acts because let furnished. All the cases raised the same questions. In *Bennett's* case the tenant had occupied a furnished room at 23s. a week until a rent tribunal reduced it to 14s. a week under the Furnished Houses (Rent Control) Act, 1946. The room was completely furnished. In determining whether the sum attributable to the use of the furniture was "a substantial portion of the whole rent" within the meaning of s. 10 (1) of the Rent, etc., Act, 1923, which would have the effect of removing the premises from the operation of the Rent Restrictions Acts by virtue of s. 3 (2) (*b*) of the Act of 1939, the county court judge accepted the value of £30 placed on the furniture by the registrar and took 20 per cent., that is, £6 a year or 2s. 4d. a week, as a fair sum for its use as between a willing lender and a willing borrower. That figure was 10·3 per cent. of the whole rent of 23s. a week. The tenant counter-claimed under s. 9 (1) of the Act of 1920 for repayment of rent at 23s. a week over the period when it was paid, though at the date of making that counter-claim she was paying only the 14s. a week which the tribunal had ordered and which she acknowledged to be reasonable. The county court judge held the sum attributable to the use of furniture to be "a substantial portion of the whole rent" and made an order for possession. He gave judgment for the tenant on, holding to be maintainable, the counter-claim for excess rent. The tenant appealed and the landlord cross-appealed. By s. 7 of the Furnished Houses (Rent Control) Act, 1946, ss. 9 and 10 of the Act of 1920 "shall not apply as regards the rent charged for any house entered in the register under . . . this Act in respect of any period subsequent to such registration."

SOMERVELL, L.J., said that when, as here, the total value of furniture included in a letting was ascertained, and an annual percentage of that value was reduced to a weekly figure (here 2s. 4d.) forming part of the weekly rent, the weekly figure so arrived at was not necessarily, or even normally, the final figure to be attributed to the furniture, but was merely one of the factors to be ascertained in determining the figure so attributable. While the county court judge, in deciding whether the sum attributable to the use of furniture was a substantial part of the whole rent, must necessarily direct his mind to a definite sum of money, he was not obliged actually to state in pounds, shillings and pence the sum so attributable where, having considered all the relevant matters, he was satisfied that, on any view, the sum attributable was or was not a substantial portion of the whole rent. No such obligation was imposed on county court judges by the judgment of Morton, L.J., in *Palser* v. *Grinling* [1946] K.B. 631; 90 SOL. J. 453. The county court judge had, in view of Lord Simon's speech in that case [1948] A.C. 291, at p. 317; 92 SOL. J. 53, properly regarded the 2s. 4d. a week based on 20 per cent. of the value of the furniture as merely one relevant factor, or the first stage, in his calculation; and, properly construing and applying the principles there laid down, he had correctly made some addition, in respect of other relevant considerations, to the 10·3 per cent. represented by 2s. 4d. a week, and was consequently justified in his finding that the sum attributable to the use of the furniture was a substantial portion of the whole rent. The appeals therefore failed. As for the counter-claim, there was nothing in s. 9 (1) of the Act of 1920 or s. 7 of the Act of 1946 (in which section the words "rent charged" appeared to mean the rent which the tenant had to pay by the order of a rent tribunal) to prevent a tenant from applying for repayment of past excess rent under s. 9 (1) by reason that, at the time of his application, the rent which he was actually paying was not, and was not alleged by him to be, excessive, having been fixed by a rent tribunal under the Act of 1946 and registered. The counter-claims were therefore maintainable.

TUCKER, L.J., agreeing, said that, generally speaking, it was desirable for a county court judge to indicate the final figure on which he based his decision as to the substantial portion of the whole rent. That could generally be done on taking a broad view of the matter. The figure arrived at, in the first place, as here, by taking a percentage of the capital value of the furniture, was *prima facie* the percentage which should prevail unless the tenant could show reason why it should be reduced. On the other hand, there were other considerations, applicable in the landlord's favour, which might tend to increase it, and the county court judge here was entitled to make an unquantified addition on their account to the 10·3 per cent. and reach his conclusion accordingly.

BUCKNILL, L.J., agreed. Appeals and cross-appeals dismissed.

APPEARANCES: *Magnus* (*S. Rabin & Co.*); *H. B. Grant* (*H. B. Wedlake, Saint & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTION: APPLICATION FOR REPAYMENT OF RENT

Riordan *v.* Minchin

Tucker, Bucknill and Somervell, L.JJ. 29th July, 1948

Appeal from Farnham County Court.

On 29th October, 1946, when the appellant was still a tenant of a house which was let to him furnished by the respondent landlord, he referred his tenancy to the local rent tribunal under the Furnished Houses (Rent Control) Act, 1946. The tribunal reduced the rent from 30s. to 10s. 6d. a week. Though the house was furnished when let, it had been held in other proceedings that the amount of the rent attributable to the use of the furniture was not "a substantial portion of the whole rent" within the meaning of s. 10 (1) of the Rent, etc., Act, 1923, and that it was therefore, though furnished when let, not excluded from the operation of the Rent Restrictions Acts by s. 3 (2) (*b*) of the Rent, etc., Act, 1939, replacing s. 12 (2) of the Rent, etc., Act, 1920. An order for possession having been made against the appellant, he was evicted on 19th May, 1947. He then applied under s. 9 (1) of the Act of 1920, as amended by the Act of 1939, and as applicable by virtue of the latter Act to the house in question, for repayment of excessive rent paid by him while tenant. The county court judge found that he was from 19th May neither a contractual nor a statutory tenant, and he held that the application under s. 9 (1) of the Act of 1920 was accordingly not competent. The present appeal was from that decision.

SOMERVELL, L.J.—TUCKER and BUCKNILL, L.JJ., agreeing—said that *Roppel* v. *Bennett* (*ante*, see this page) decided a somewhat similar point in favour of an applicant under s. 9 (1). In the words "on the application of the tenant" in s. 9 (1), "tenant" meant tenant during the period to which the application related. The application was therefore competent. The important question would be left open—because it had not been taken in the county court—whether s. 9 (1) remained applicable to furnished premises which, because the sum attributable to use of the furniture was not "a substantial portion of the whole rent" (s. 10 (1) of the Act of 1923) were, although furnished, not taken out of the Acts by s. 12 (2) of the Act of 1920. Appeal allowed.

APPEARANCES: The appellant appeared in person; *Barry Sheen* (*Stevens & Bolton*, Farnham).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVORCE: CONNIVANCE

Woodbury *v.* Woodbury

Tucker, Bucknill and Somervell, L.JJ. 30th July, 1948

Appeal from Wallington, J.

The appellant husband had an adulterous association with his infant son's governess which was hidden from the respondent, his wife. In February, 1940, the wife discovered the adultery and begged the husband to give up the association, but he refused. In her resulting distraught condition the wife, on 8th March, 1940, wrote to the governess stating: "After a literally sleepless night and a long talk with my beloved husband I want to be big about it—he needs you as a lover and friend quite apart from his fondness for me, for whom he no longer feels any desire in the way in which you gratify him—so please go ahead, if you wish as friend and lover . . . but I cannot give you my son as well . . . you must not share him with my husband." The letter further referred to "the vile situation." She wrote to the husband the same day a letter headed "Terms for a peaceful settlement," stating that the husband must share his son with the wife, that "You continue with the governess as her friend and lover," and that he could have both the governess and his son, but "on different sides of your life, cleanly and happily, without agony to your son's mother . . ." In June, 1940, the wife met her husband in London and placed before him the alternatives of

divorce or reconciliation. The husband chose for reconciliation. In the ensuing weeks the wife visited the husband in London several times and intercourse took place. On 20th July, 1940, as arranged between them, the wife sailed for America with the son in view of the imminent danger from bombing. She returned to England in 1947 and petitioned the court for divorce on the ground of the husband's adultery with the governess in 1940, 1941 and 1947. The husband contended, *inter alia*, that the wife had connived at the adultery taking place between March, 1940, and the reconciliation in June, 1940, by her letters of 8th March, 1940. Wallington, J., negatived the contention and pronounced a decree *nisi*. The husband now appealed. (*Cur. adv. vult.*)

BUCKNILL, L.J., in a written judgment—TUCKER and SOMERVELL, L.JJ., agreeing—said that the two letters of March, 1940, were certainly not intended, as the husband argued, as a licence to the husband to continue his adulterous association, though they might be so regarded in their literal meaning and divorced from the circumstances in which they were written. As the wife had shown by her conduct that she greatly desired the adultery to cease, had communicated that desire to both her husband and his mistress, and had taken the best steps available to her, as she thought, to stop it, she was not in his (his lordship's) opinion guilty of connivance, although at the time she took no active steps to leave her husband or divorce him, and even suggested that he should continue "with the governess as her friend and lover." The letters of 8th March, 1940, did not, therefore, in his opinion, amount to connivance at the adultery between that date and the date of the reconciliation in June, 1940. Appeal dismissed.

APPEARANCES: *Fairweather* (*Tarlo, Lyons & Co.*); *Arthian Davies*, K.C., and *Roland Adams* (*Blount, Petre & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

PRACTICE: CHANGE IN TITLE OF PLAINTIFF

Alexander Mountain & Co. (suing as a firm) v. Rumere

Lord Goddard, C.J. 8th June, 1948

Summons.

The applicant was the widow of one Mountain who had died in July, 1947. He had been carrying on business under the style "Alexander Mountain & Co." He was, however, a sole trader and the proprietor of the business. The applicant, as his executrix and universal legatee, had since his death been carrying on the business under the same style. In October, 1947, the writ in the present action was issued. The widow now applied to have her name as executrix substituted for "Alexander Mountain & Co." as that of the plaintiff in the writ. R.S.C., Ord. 16, r. 2, provides for such substitution "where an action has been commenced in the name of the wrong person as plaintiff . . ."

LORD GODDARD, C.J., said that, even if the husband had been alive at the time, it would have been wrong to insert in the writ as the name of the plaintiff the name of a firm which did not exist. *Hill & Son* v. *Tannerhill* [1944] K.B. 472 showed that in such a case leave to amend the writ by substituting the husband's name would have been granted under Ord. 16, r. 2. The defendants argued that *Tetlow* v. *Orela, Ltd.* [1920] 2 Ch. 24 showed that the rule did not justify substituting as plaintiff the representative of a man who was dead when the action was begun. He (his lordship) thought that case indistinguishable from the present. There it had been sought to substitute a dead man's representatives in the writ in an action which had been begun after his death. It was argued that because the name of a firm had appeared in the writ the present case was distinguishable. *Hill & Son* v. *Tannerhill, supra*, showed that the firm name was the equivalent of the actual name of the husband. There were here, therefore, the two errors of suing in the name of a non-existent firm and of suing in the name of a dead man. There was accordingly here the same fatal error as in *Tetlow's* case, *supra*, with an additional error. The application failed. Application dismissed.

APPEARANCES: *Claude Duveen* (*Forsyte, Kerman & Phillips*); *Gerald Gardiner*, K.C., and *Gumbel* (*C. Grobel, Son & Co.*, for *Arthur Robson*, Chiswick).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTION: STANDARD RENT

Alliance Property Co., Ltd. *v.* Shaffer

Slade, J. 15th June, 1948

Action.

By a lease dated 31st May, 1934, the plaintiff landlords let a flat within the Rent Restrictions Acts to a tenant at a rent of £175 a year. Later that day a supplementary deed was executed between those parties providing that the tenant should pay another £100 a year in respect of the cost of alterations to the flat and of management of the building. The supplementary deed provided that it was to run concurrently with the lease and that the payments under it were to be recoverable in the same way as rent. By s. 12 (1) (*a*) of the Rent, etc., Act, 1920, as modified by Sched. I to the Rent, etc., Act, 1939, the standard rent of the flat was the rent at which it was let on 1st September, 1939. In an action by the landlords for arrears of rent at £300 a year under a lease of the flat to the defendant dated 23rd May, 1944, the tenant counter-claimed for rent overpaid on the basis of the standard rent which he alleged to be £175 a year.

SLADE, J., said that in his opinion the matters in respect of which the additional £100 a year was payable were matters touching and concerning the demised premises. *Property Holding Co., Ltd.* v. *Clark* [1948] 1 K.B. 630 was therefore applicable, and the £100 was rent within the principles there laid down. It was immaterial that here the additional payment was provided for in a separate deed. *White* v. *Richmond Court, Ltd.* [1944] K.B. 576 was distinguishable, as the question there concerned premises first let after 1st September, 1939. On that date the premises here were let at £275 a year, since the two deeds must, on their true construction, be read together, and that was the standard rent. Judgment for the plaintiff landlords.

APPEARANCES: *L. A. Blundell* (*Clifford-Turner & Co.*); *Michael Hoare* (*Bernard Shaffer*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

REQUISITIONING: DELEGATION OF POWERS

Carlish *v.* East Ham Corporation

Lord Goddard, C.J. 21st July, 1948

Action.

On 1st September, 1947, the Ministry of Health wrote to the town clerk of East Ham that the Minister "hereby delegates to you, as clerk, his functions under reg. 51 of the Defence (General) Regulations, 1939, for the purpose of requisitioning part of" a specified house belonging to the plaintiff. Two days later, the town clerk notified the plaintiff that he had taken possession of the house "excluding shop and parlour" "in exercise of the powers delegated to me by the Minister of Health under . . . reg. 51 . . ." The plaintiff brought this action against East Ham Corporation challenging the validity of the requisitioning.

LORD GODDARD, C.J., said that the delegation in question was an *ad hoc* delegation in respect of the house in question. By virtue of s. 7 of the Emergency Powers (Defence) Act, 1939, the delegation was sufficiently proved by production of the letter from the Ministry, for the Minister's delegation of his authority did not require to be in any particular form, and the letter was an "instrument made or issued by" the Minister within the meaning of that section. As the Minister had power to requisition part only of a house, it followed that he could delegate power to requisition part of a house to a local authority. He could properly leave it to the local authority to requisition as much or as little of the house as they thought fit. The delegation of power to requisition an unspecified part of the house could not, therefore, be said to be void for vagueness. The requisitioning was accordingly valid. Judgment for the defendants.

APPEARANCES: *L. A. Blundell* (*Spiro & Steele*); *Squibb* (*Sharpe, Pritchard & Co.*, for the *Deputy Town Clerk*, East Ham).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 1840. **Criminal Justice Act, 1948** (Date of Commencement) Order, 1948. August 5.

No. 1837. **Defence Regulations** (No. 7) Order, 1948. August 5.

No. 1838. **Diplomatic Privileges** (General Amendment) Order, 1948. August 5.

No. 1839. **Employers' Liability Insurance** (Modification) Order, 1948. August 5.

No. 1856. **Exchange Control** (Payments) (Tangier) Order, 1948. August 9.

No. 1784. **Local Government** (Members' Allowances) Regulations, 1948. July 29.

No. 1842. **Metropolitan Police Courts** (Divisions) Order, 1948. August 5.

No. 1852. **Railway and Canal Securities** (Conversion Date) (No. 10) Order, 1948. August 5.

No. 1843. **Societies** (Miscellaneous Provisions) Act (End of Emergency) Order, 1948. August 5.

No. 1766. **Town and Country Planning** (Building Preservation Order) Regulations, 1948. July 28.

No. 1780. Town and Country Planning (Churches, Buildings for Religious Worship and Burial Grounds) (Scotland) Regulations, 1948. July 28.

No. 1779. Town and Country Planning (Control of Advertisements) (Scotland) Regulations, 1948. July 28.

No. 1767. Town and Country Planning (Development Plans) Regulations, 1948. July 28.

MINISTRY OF TOWN AND COUNTRY PLANNING

Town and Country Planning Act, 1947. Town and Country Planning (Minerals) Regulations, 1948, and Town and Country Planning (Modification of Mines Act) Regulations, 1948. Explanatory Memorandum. July, 1948.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, W.C.2.]

BOOKS RECEIVED

The Special Contribution or Capital Levy under the Finance Act, 1948. By J. H. MUNKMAN, LL.B., of the Middle Temple and North-Eastern Circuit, Barrister-at-Law. 1948. pp. viii and 39. London: The Solicitors' Law Stationery Society, Ltd. 3s. 6d. net.

Jeremy Bentham and the Law. A Symposium. Edited by GEORGE W. KEETON and GEORG SCHWARZENBERGER. 1948. pp. (with Index) 266. London: Stevens & Sons, Ltd. 20s. net.

Shaw's Guide to the Local Government Act, 1948. By F. H. GLADWIN, A.R.V.A. 1948. pp. xvi and (with Index) 109. London: Shaw & Sons, Ltd. 15s. net.

A Handbook on Wills. By A. H. COSWAY. Third Edition. 1948. pp. vi and (with Index) 113. London: Sir Isaac Pitman & Sons, Ltd. 6s. net.

Your Obedient Servant. Some Reflections on Correspondence between Government Departments and the Public. 1948. pp. 32. London: The Institute of Public Administration. 1s. net.

Belize. An Anglo-Guatemalan Controversy. 1948. London: The Guatemalan Legation.

The Local Government Act, 1948. With an Introduction by S. SEUFFERT, of the Middle Temple and South-Eastern Circuit, Barrister-at-Law, and an Index compiled by GEORGE H. C. VAUGHAN, B.A., of the Middle Temple, Barrister-at-Law. 1948. pp. xxxix, and (with Index) 125. London: Eyre and Spottiswoode (Publishers), Ltd. 9s. 6d. net.

The Transport Act, 1947. Reprinted from Butterworth's Annotated Legislation Service. By DAVID KARMEL, B.A., LL.B., of Gray's Inn and the Northern Circuit, Barrister-at-Law, and RICHARD BEDDINGTON, B.A., of the Inner Temple and the South-Eastern Circuit, Barrister-at-Law. 1948. pp. viii and (with Index) 296. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

A. B. C. of Limited Liability Companies. Based on the Provisions of the Companies Act, 1948. By ALFRED READ, M.B.E., F.C.I.S. 1948. pp. (with Index) 52. London: Geographers' Map Co., Ltd. 5s. net.

Index to the Companies Act, 1948. Prepared for the Chartered Institute of Secretaries by A. T. PURSE, LL.B., A.C.I.S., of Gray's Inn, Barrister-at-Law. 1948. pp. 76. Cambridge: W. Heffer & Sons, Ltd. 5s. net.

Kime's International Law Directory for 1948. Fifty-sixth year. Edited and compiled by PHILLIP W. T. KIME. 1948. pp. (with Index) xiv and 460. London: Butterworth & Co. (Publishers), Ltd.; Kime's International Law Directory, Ltd. 15s. net.

Rent and Mortgage Interest Restrictions. By the Editors of "Law Notes." Twenty-first Edition. 1948. pp. xxxiv and (with Index) 416. London: "Law Notes" Publishing Offices. 27s. 6d. net.

The Law List, 1948. Edited by LESLIE C. E. TURNER. 1948. pp. xi and (with Index) 2075. London: Stevens & Sons, Ltd. 15s. net.

Macgillivray on Insurance Law. Third Edition. By E. J. MACGILLIVRAY, K.C., LL.B., Member of the Faculty of Advocates, Scotland, and DENIS BROWNE, M.A., of Lincoln's Inn, Barrister-at-Law. 1947. pp. xcvii and (with Index) 1567. London: Sweet & Maxwell, Ltd. 147s. net.

NOTES AND NEWS

Honours and Appointments

The King has approved a recommendation of the Home Secretary that Mr. RALPH VIBERT be appointed Solicitor-General of Jersey in succession to Mr. C. S. Harrison, who was recently appointed Attorney-General there.

Mr. J. H. CRAIK, temporary Assistant Solicitor in the Warrington Town Clerk's department, has been appointed Assistant Solicitor to Wigan Corporation. He was admitted this year.

Mr. E. L. STURDY, Parliamentary and Legal Assistant at Hampstead, has been appointed Assistant Solicitor to St. Marylebone Borough Council.

The following appointments are announced in the Colonial Legal Service: Mr. S. J. FOSTER to be a magistrate, Gambia; Mr. S. C. SLEEMAN to be a legal officer, Malaya; and Mr. J. WICKS, Crown Counsel, Palestine, to be a magistrate, Hong Kong.

Notes

The International Law Association, at its forty-third conference, to be held in Brussels from 29th August to 4th September, 1948, will be celebrating the seventy-fifth anniversary of its foundation in Brussels in 1873. Some seventy members from this country will be included in the large attendance expected from all parts of the world.

BLIND LAWYERS GROUP

The National Institute for the Blind has recently set up a Blind Lawyers Group in connection with its Careers Committee. Its main object is to keep the Institute in touch with the requirements of blind lawyers.

At its first meeting the group recommended, *inter alia*, that a directory of blind lawyers should be compiled, and those known to the Institute have been circularised accordingly. The Institute would be glad to hear from blind barristers, solicitors or law students who have not received the circular.

Wills and Bequests

Mr. E. Hollinshead, solicitor, of Stoke-on-Trent, left £38,554, with net personalty £38,183.

Mr. A. C. Smith, retired solicitor, of Earsham, Norfolk, left £141,992. He left £500 to All Hallows Hospital, Ditchingham.

OBITUARY

MR. J. A. BROOK

Mr. John Alan Brook, solicitor, of Messrs. Newstead and Brook, of Otley, Yorkshire, died on 9th August, aged twenty-eight. He was admitted in 1945.

MR. J. E. BROWN-HUMES

Mr. John Edward Brown-Humes, solicitor, of Messrs. J. E. Brown-Humes & Co., of Bishop Auckland, died on 10th August, aged sixty. Admitted in 1909, he was Coroner for the Darlington Ward and Clerk to the Justices of Bishop Auckland.

MR. W. M. DURANT

Mr. William Maitland Durant, solicitor, of Messrs. Maitland Durant & Grange-Bennett, of Bournemouth, died on 25th July, aged fifty-eight. He was admitted in 1919 and was President of Bournemouth Law Society last year.

MR. A. RILEY

Mr. Alfred Riley, solicitor, of Messrs. Alfred Riley, Sutcliffe and Co., of Blackburn, died on 9th August, aged seventy-eight. Admitted in 1894, he was Blackburn's oldest practising solicitor.

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